HARDIAL SINGH SEKHON *a*

v.

TALAM LEASING SDN BHD

COURT OF APPEAL, KUALA LUMPUR *b*
MOKHTAR SIDIN JCA
ABDUL HAMID MOHAMAD JCA
ABDUL KADIR SULAIMAN JCA
[CIVIL APPEAL NO: B-03-16-1995]
5 JULY 2001 *c*

CIVIL PROCEDURE: *Appeal - Record of appeal - Failure to file in time - Whether fatal - Sealed order allegedly not received - Whether record of appeal could still have been filed in time with draft order - Whether sealed order could be filed later as supplementary record of appeal - Rules of the Court of Appeal 1994, r. 18(7)* *d*

The appellant's notice of appeal was lodged on 3 July 1995. No record of appeal however was filed on or before the expiry of the six-week period prescribed by r. 18(7) Rules of the Court of Appeal 1994 ('RCA'), *ie*, 15 August 1995. Apparently, there was also no application for extension of time to file the record of appeal out of time. At the hearing on 28 March 2001, the appellant submitted that he did not file his record of appeal because he did not receive the sealed order. The appellant also contended that he had applied, on 24 March 2001, to file the record of appeal out of time. The respondent maintained that the order was perfected and sealed on 7 June 1995, on which date the grounds of judgment were also made available. *e* *f*

Held:
Per Mokhtar Sidin JCA

[1] The appellant had plainly breached r. 18(7) RCA. Even if he did not receive the sealed order, he could still have filed the record of appeal in time together with the draft order. The sealed order could be filed later as a supplementary record of appeal. The delay was therefore unjustifiable. *g*

[Appeal struck off.]

*[**Bahasa Malaysia** Translaton Of Headnotes]* *h*

Notis rayuan plaintif telah dibuat pada 3 Julai 1995. Walau bagaimanapun tiada rekod rayuan difailkan pada atau sebelum luputnya tempoh enam minggu yang ditetapkan oleh k. 18(7) Kaedah-Kaedah Mahkamah Rayuan 1994 ('KMR'), iaitu, 15 Ogos 1995. Nampaknya tidak terdapat juga *i*

permohonan untuk perlanjutan masa bagi memfailkan rekod rayuan di luar masa. Di perbicaraan yang diadakan pada 28 Mac 2001, perayu telah berhujah bahawa beliau tidak memfailkan rekod rayuan kerana beliau tidak menerima perintah yang dimeteraikan. Perayu juga menegaskan bahawa beliau telah memohon, pada 24 Mac 2001, untuk memfailkan rekod rayuan di luar masa. Responden mempertahankan bahawa perintah tersebut telah disempurnakan dan dimeterai pada 7 Jun 1995, pada tarikh yang mana alasan-alasan penghakiman telah juga diadakan.

Diputuskan:
Oleh Mokhtar Sidin HMR

[1] Perayu telah jelas mengingkari k. 18(7) KMR. Meskipun jika beliau tidak menerima perintah yang dimeteraikan itu, beliau masih boleh memfailkan rekod rayuan dalam lingkungan masanya bersama-sama dengan perintah deraf. Perintah yang dimeterai boleh difailkan kemudian sebagai rekod rayuan tambahan. Kelewatan itu oleh yang demikian tidak dapat dijustifikasikan.

[Rayuan dibatalkan.]

Legislation referred to:
Rules of the Court of Appeal 1994, r. 18(7)

Appellant in person
For the respondent - Khor Loke Yew; M/s Christina Chia, Ng & Partners

Reported by Gan Peng Chiang

JUDGMENT

Mokhtar Sidin JCA:

This matter was one of a number of appeals which were listed on 27 March 2001 to be disposed of by us. According to the registry of the Court of Appeal, the appellant gave notice of appeal to appeal against the decision of the learned judge of the High Court, Shah Alam on 3 July 1995. According to r. 18(7) of the Rules of the Court of Appeal 1994, the appellant is required to file the record of appeal within six weeks after the entry of the appeal or within such further time as the court may allow. The full text of r. 18(7) reads:

> 18(7) The memorandum and copies above referred to which, together shall be called the record of appeal, shall be filed at the Registry within six weeks after the entry of the appeal or within such further time as the court may allow.

From the record available at the registry, it was clear that the record of appeal was not filed on or before 15 August 1995, that was the time stipulated by the rule. There was also no application by the appellant to extend the time to file the record of appeal as required by the rule. The practise to extend the time where the judgment of the judge of the High Court could not be obtained in time is in the Practice Direction. In all other circumstances, extension of time could be made by way of notice of motion. Apparently, from the record the appellant did not make any application to extend the time to file the record of appeal. For that reason, the registry fixed this matter for disposal on 27 March 2001.

On 27 March 2001, the appellant appeared personally before us while Mr. Khor Loke Yew appeared for the respondent. At the request of the appellant the matter was fixed for hearing on 28 March 2001 at 2.30pm. When this matter came up for hearing before us, the appellant again appeared before us personally and Mr. Khor appeared for the respondent.

In his submission, the appellant stated that he filed a draft order on 30 July 1995, but the perfected order was never issued because the file was missing. The appellant admitted that he received the grounds of judgment on 7 June 1995. Since he did not receive the sealed copy of the order, he did not file the record of appeal. The appellant then went on to say that he did apply to file the record of appeal out of time. This application was only made on 24 March 2001, ie, after he received the notice and the matter had been fixed for disposal on 27 March 2001.

Mr. Khor, on the other hand, submitted that there was no merit in the appellant's submission to justify the extension of time. Mr. Khor submitted that from his record, the order was perfected and sealed on 7 June 1995 and the grounds of judgment was also made available on 7 June 1995. As such, there was no justification of not filing the record of appeal on or before 15 August 1995. As to the appellant's application dated 24 March 2001, it was not an application for extension of time but a notice seeking directions from the Chief Justice.

After hearing the parties, we are of the view that the appellant failed to file the record of appeal within the time stipulated by r. 18(7) of the Rules of the Court of Appeal. The appellant admitted that he received the grounds of judgment on 7 June 1995, but he did nothing or made any attempt to file the record of appeal within the stipulated time. Assuming that it is true that he did not receive the sealed copy of the order, he could still file the record of appeal within the stipulated time with the draft order and the sealed copy of the order be filed later as a supplementary record of appeal which is commonly

done in other appeals. In the present case we are satisfied that the sealed copy of the order was duly perfected on 7 June 1995 as stated by the learned counsel for the respondent. We have no reason to disbelieve him.

From the evidence, we are satisfied that the appellant failed to comply with r. 18(7) of the Rules of the Court of Appeal. As for the application dated 24 March 2001, we would not be able to grant an extension of time because it is made more than five years after the ground of judgment was made available to him and there was no justification for the delay.

The appeal is hereby stuck off. The deposit is to be paid to the respondent as full cost of the appeal.